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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,497	12/03/2001	Rainer Graefe	Mo6566/LeA 34,399	8050

157 7590 03/28/2003

BAYER POLYMERS LLC
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EXAMINER

REDDICK, MARIE L

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 03/28/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/006,497

Applicant(s)

GRAEFE ET AL.

Examiner

Judy M. Reddick

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/29/02;02/03/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.5 & 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. *Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.*

Information Disclosure Statement

2. *The information disclosure statements filed on 12/03/01 & 02/03/03 have been carefully considered and placed in the application file.*

Claim Rejections - 35 USC § 102

3. *The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:*

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. *The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:*

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. *Claims 1 & 3-5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Vanderbilt et al(U.S. 3,447,572).*

Vanderbilt et al disclose and exemplify coagulated compositions formed basically via mixing a combination of a latex of an organic peroxide, curable NBR rubbery polymer comprising 55 to 75 wt.% of butadiene and 25 to 45 wt.% of acrylonitrile, a powdered polyvinyl chloride, an unsaturated polyester and other conventional adjuncts which include those that function as a coagulating agent and wherein the ingredients are mixed

at a compounding temperature of 310 degrees F and cooled to a temperature of 130 degrees F. See col. 1, lines 43-65, the paragraph bridging cols. 1 and 2, col. 3-7, Runs I, II and VI and the claims. Vanderbilt et al therefore anticipate the instantly claimed invention with the understanding that the components, in both content and character, and the process parameters of Vanderbilt et al overlap in scope with the claimed components and process parameters.

Claim Rejections - 35 USC § 103

6. *The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:*

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. *The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:*

1. *Determining the scope and contents of the prior art.*
2. *Ascertaining the differences between the prior art and the claims at issue.*
3. *Resolving the level of ordinary skill in the pertinent art.*
4. *Considering objective evidence present in the application indicating obviousness or nonobviousness.*

8. *This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).*

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9. *Claims 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vanderbilt et al(U.S. 3,447,572) in combination with applicants' own disclosure..*

The disclosure of Vanderbilt et al for what it teaches and as applied to claims 1 and 3-5 supra. Further, the disclosure of Vanderbilt et al differs basically from the claimed invention as per the non-express disclosure of an embodiment directed to the polyvinyl chloride component per the claimed invention as recited in claim 2. However, applicant at page 3 states that the polyvinyl chlorides usable in the claimed invention are commercially well known and to this end, it would have been obvious to the skilled artisan following applicants' guidelines @ page 3, lines 21-24, to use any commercially available polyvinyl chloride governed by the claimed particle size in lieu of the polyvinyl chloride component of the rubbery composition of Vanderbilt and with a reasonable expectation of success, absent a clear showing of unexpected results commensurate in scope with the claims.

Conclusion

10. *The prior art to Konrad et al(U.S. 1,973,000), incorporated by reference per the disclosure of Vanderbilt et al, is cited as of interest for teaching the production of preferred NBR polymers. The additional prior art is cited as of being illustrative of the general state of the art.*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judy M. Reddick whose telephone number is (703)308-4346. The examiner can normally be reached on Monday-Friday, 6:30 a.m.-3:00 p.m..

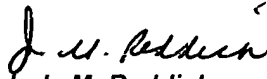
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703)308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)892-9311 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-8183.

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Judy M. Reddick
Primary Examiner
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JMR 
March 22, 2003